

A **Tetuan J & S Holdings Sdn Bhd v
A Karim bin Hassan**

HIGH COURT (TEMERLOH) — CIVIL APPEAL NO 11-40 OF 1999
VT SINGAM JC
10 AUGUST 2000

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Civil Procedure — Appeal — Right of appeal — Whether decision on preliminary objection can be appealed against — Whether plaintiffs will be prejudiced by doctrine of res judicata and may not be able to raise defence of limitation during trial — Subordinate Courts Rules 1980 O 49 r 6

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The plaintiffs claimed against the defendants for damages for breach of a sale and purchase agreement dated 14 November 1988 due to late delivery of vacant possession. The plaintiffs alleged that pursuant to the terms of the agreement, the defendants had agreed to deliver vacant possession of a single-storey terrace house within 24 months, ie on 13 November 1990 but vacant possession of the house was only

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delivered on 31 May 1996. On the date fixed for hearing, the defendants' counsel raised a preliminary objection that the plaintiffs' claim was statute-barred under s 6(1) of the Limitation Act 1953. The magistrate overruled the preliminary objection and fixed the case for hearing on 28 May 1999. The defendants filed a notice of appeal on

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4 March 1999 at the magistrate's court to appeal to the High Court. The defendants argued that: (i) they have the right of appeal against the decision on the preliminary objection pursuant to O 49 r 6(1) of the Subordinate Courts Rules 1980; and (ii) they will be prejudiced by the doctrine of res judicata and may not be able to raise the defence of limitation during the trial.

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Held:

(1) If the order or decision finally disposes of the principal matter or the subject matter in dispute thereby bringing a conclusion to the whole of the proceedings without further date of hearing, the order or decision in those circumstances is appealable. The decision or ruling made by the learned magistrate on the preliminary objection was not a final decision as it had only disposed of the preliminary objection thereby leaving scope for the parties to proceed with the hearing on the principal or mainsubject matter which will determine the rights of the parties (see p 748A-B, C-D). The word 'decision' in O 49 r 6 of the Subordinate Courts Rules 1980 does not apply to the decision made by the learned magistrate on the preliminary objection (see p 749B-C).

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(2) As the defendants have raised the issue of limitation in the statement of defence, the defendants have the right to rely on that plea of limitation when the case proceeds for hearing notwithstanding the decision of the learned magistrate on the preliminary objection. The doctrine of res judicata does not apply

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against the defendants as the learned magistrate had not heard the evidence on the merits and the defendants were entitled to raise once again the plea of limitation as part of the defendants' case during the trial (see p 748D-E).

[Bahasa Malaysia summary]

Plaintif-plaintif telah menuntut terhadap defendan-defendan ganti rugi kerana telah melanggar perjanjian jual beli bertarikh 14 November 1988 disebabkan oleh penghantarserahan lewat milikan kosong. Plaintif-plaintif mendakwa bahawa mengikut terma-terma perjanjian, defendan-defendan telah bersetuju untuk menghantar serah milikan kosong sebuah rumah teres satu tingkat dalam tempoh 24 bulan, iaitu pada 13 November 1990 tetapi milikan kosong rumah tersebut hanya dihantar serah pada 31 Mei 1996. Pada tarikh perbicaraan yang ditetapkan, peguam defendan-defendan menimbulkan satu bantahan awal bahawa tuntutan plaintif-plaintif adalah di luar tempoh masa di bawah s 6(1) Akta Had Masa 1953. Majistret telah menolak bantahan awal tersebut dan menetapkan kes untuk perbicaraan pada 28 Mei 1999. Defendan-defendan telah memfailkan satu notis rayuan pada 4 Mac 1999 di mahkamah majistret untuk membuat rayuan ke Mahkamah Tinggi. Defendan-defendan menghujahkan bahawa: (i) mereka mempunyai hak untuk membuat rayuan terhadap keputusan berhubung bantahan awal tersebut menurut A 49 k 6(1) Kaedah-Kaedah Mahkamah Rendah 1980; dan (ii) mereka akan diprejudiskan oleh doktrin res judicata dan mungkin tidak dibenarkan menimbulkan pembelaan had masa semasa perbicaraan.

Diputuskan:

- (1) Sekiranya perintah atau keputusan akhirnya telah menyelesaikan perkara penting atau perkara pokok pertikaian dan seterusnya membawa kepada kesimpulan keseluruhan prosiding tanpa tarikh perbicaraan selanjutnya, perintah atau keputusan di dalam keadaan tersebut boleh dirayu. Keputusan atau perintah yang dibuat oleh majistret yang bijaksana berhubung bantahan awal tersebut bukan keputusan muktamad kerana ia telah hanya menyelesaikan bantahan awal tersebut yang justeru itu meninggalkan skop untuk pihak-pihak meneruskan perbicaraan atas perkara pokok penting yang akan menentukan hak pihak-pihak (lihat ms 748A-B, C-D). Perkataan 'keputusan' dalam A 49 k 6 Kaedah-kaedah Mahkamah Rendah 1980 tidak terpakai kepada keputusan yang dibuat oleh majistret yang bijaksana berhubung bantahan awal tersebut (lihat ms 749B-C).
- (2) Memandangkan defendan-defendan telah menimbulkan isu had masa di dalam pernyataan tuntutan, defendan-defendan mempunyai hak untuk bergantung pada rayuan had masa apabila

- A** kes dihadapkan untuk perbicaraan walaupun terdapat keputusan majistret yang bijaksana terhadap bantahan awal. Doktrin res judicata tidak terpakai terhadap defendan-defendan kerana majistret yang bijaksana tidak mendengar keterangan atas merit dan defendan-defendan berhak untuk menimbulkan sekali lagi rayuan had masa sebagai sebahagian daripada kes defendan-defendan semasa perbicaraan (lihat ms 748D-E).]
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Notes

For cases on right of appeal, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 896-898.

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Cases referred to

Dato' Seri Anwar Ibrahim v PP [1999] 1 MLJ 321 (folld)
Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57 (refd)
D *Ratnam v Cumarasamy & Anor* [1962] MLJ 330 (refd)
Saad Abas & Anor v PP [1999] 4 MLJ 129 (folld)
Watson v Rodwell (1879) 11 Ch D 150 (refd)

E Legislation referred to

Contracts Act 1950 s 26(b)
 Courts of Judicature Act 1964 ss 3, 4, 27, 29
 Limitation Act 1953 s 6(1)
 Subordinate Courts Rules 1980 O 49 r 6, (1)

- F** **Appeal from:** Suit No 72-685 of 1998 (Magistrate's Court, Temerloh)

YW Mak (Yeong & Mak) the appellants.

M Ramachelvam (G Sivakumar) (*Zuki, Gandhi & Amin*) for the appellants.

G VT Singham JC:

Appeal

- This is an appeal by the defendants against the decision of the learned magistrate, Magistrate's Court Temerloh given on 20 February 1999 wherein the preliminary objection of the defendants' counsel was overruled. In this appeal, the appellants and the respondents are referred to as the defendants and the plaintiffs respectively.
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Plaintiffs' claim

- I** The plaintiffs' claim against the defendants is for damages for breach of the terms of the sale and purchase agreement dated 14 November 1988, particularly cl 18(1), namely for the late delivery of vacant possession of a

single-storey terrace house at the price of RM38,000 which was part of a housing project. The plaintiffs alleged that pursuant to the terms of the agreement, the defendants had agreed to deliver vacant possession of the house to the plaintiffs within 24 months from the date of signing the agreement by both the parties, that was, by 13 November 1990 but vacant possession of the house was only delivered on 31 May 1996. The plaintiffs' claim for damages was for the period from 13 November 1990 till 21 May 1996 (five years ten months) calculated at the rate of 10% pa of the purchase price of RM38,000 which amounted to RM20,983.27 interest and costs.

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Statement of defence

The defendants by their statement of defence pleaded, inter alia, that the defendants' management was taken over by a new company and since then, the purchasers of the housing project including the plaintiffs, had agreed and gave an undertaking during the negotiations between the purchasers and the new management that the purchasers will allow an extension of time to the new management to complete the project and will forgo their rights under cl 18(1) and 18(2) of the agreement. Consequently, the defendants pleaded that the plaintiffs were estopped from commencing the action against them. The defendants also pleaded that since the action by the plaintiffs was not commenced within six years, the action was statute-barred under the provisions of s 6(1) of the Limitation Act 1953. Section 6(1) reads as follows:

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Limitation

Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

- (a) actions founded on a contract or on tort;
- (b) actions to enforce a recognisance;
- (c) actions to enforce an award;
- (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.

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Preliminary objection

However, on the date fixed for hearing of the civil action, the defendants' counsel raised a preliminary objection that the plaintiffs claim was statute-barred under s 6(1) of the Limitation Act 1953. On hearing counsels for both the parties, the learned magistrate overruled the preliminary objection and fixed the case for hearing on 28 May 1999.

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Notice of appeal

The defendants being dissatisfied with the decision of the learned magistrate on the preliminary objection filed a notice of appeal on 4 March 1999 at the Magistrate's Court Temerloh to appeal to the High Court.

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- A** However, before proceeding further, it is quite relevant to set out the chronology of events at the Magistrate's Court Temerloh which will become apparent at the later part of this judgment and which are as follows:

Chronology of events at magistrate's court

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11 August 1998 case came up for mention and another date was fixed for further mention to 25 August 1998 for defendants to file statement of defence.

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25 August 1998 case was fixed for further mention on 29 September 1998 for bundle of documents to be filed.

29 September 1998 case was fixed for further mention to 13 October 1998 for bundle of documents to be filed.

13 October 1998 case was fixed for hearing on 26 January 1999.

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26 January 1999 defendants' counsel raised preliminary objection and case was postponed to 12 February 1999 for hearing of the preliminary objection.

12 February 1999 preliminary objection was heard and case was adjourned to 20 February 1999 for decision.

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20 February 1999 preliminary objection was overruled and case was fixed for hearing on 28 May 1999.

28 May 1999 defendants' counsel applied for adjournment pending the outcome of the appeal to the High Court against the decision on the preliminary objection. Case was adjourned to 25 June 1999 for mention and after several applications for the case to be adjourned since 25 June 1999 pending the outcome of the appeal to the High Court, the case was finally fixed on 13 September 2000 for hearing as the magistrate was informed that the appeal had been fixed for hearing on 10 August 2000.

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In the meantime, the summons was struck out on 10 March 2000 when the plaintiffs and their counsel were not present and eventually the summons was reinstated on 2 June 2000 pursuant to an application dated 23 March 2000.

H *Reply by plaintiffs' counsel to the preliminary objection*

In reply to the preliminary objection raised by the defendants' counsels, the plaintiffs' counsel produced a letter dated 16 October 1995 from the defendants to the plaintiffs wherein the defendants had acknowledged the breach of the agreement by the defendants and had asked for extension of time till the end of December 1995 to settle the plaintiffs' claim. Therefore, the plaintiffs' counsel contended that the time for the purpose of the claim starts only from 16 October 1995 and not 13 November 1990. The

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plaintiffs' counsel further contended that the parties are bound by s 26(b) of the Contracts Act 1950 which reads:

An agreement made without consideration is void, unless —

...

- (b) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.

Further reply by defendants' counsel

In reply, the defendants' counsel further submitted that the letter dated 16 October 1995 was not the basis of the plaintiffs' claim against the defendants as the claim was based on the alleged breach of the agreement and the letter should be disregarded.

Decision of magistrate on preliminary objection

The learned magistrate overruled the preliminary objection which was raised on behalf of the defendants and fixed a date for the hearing of the civil action to 28 May 1999. Hence, this appeal by the defendants.

Direction of High Court

On 5 June 2000, when this appeal came up for hearing before this court, both counsels were directed by this court to carry out research on the law with the view to address the court whether an appeal shall lie to the High Court, against the decision of the learned magistrate on a preliminary objection and fixed the hearing of the appeal to 10 August 2000.

Submissions on appeal by defendants' counsel

On 10 August 2000, counsel for the defendants submitted as follows:

- (1) The defendants have the right of appeal against the decision on the preliminary objection and referred to O 49 r 6(1) of the Subordinate Courts Rules 1980, which reads as follows:

Notwithstanding anything contained in this Order, an appeal shall lie to a Judge in Chambers from any decision made by the Court other than a decision made after trial.

- (2) If the decision of the learned magistrate is not set aside, the defendants will be prejudiced as they will be caught by the doctrine of res judicata and may not be able to raise the defence of limitation during the trial of the civil action. In support of his argument, he relied on the decision in *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57 at p 58 and referred to the holding of the case which reads as follows:

- (1) Once a judge makes a ruling, substantive or procedural, final or interlocutory, it must be adhered to and may not be reopened. Although the first decision was made on an interlocutory matter which was purely

A procedural in nature, it was nevertheless binding on the court and on all parties to the *lis* until its reversal on appeal. The decision of the judge overruling the respondent's preliminary objection rendered the point taken *res judicata* ...

B Learned counsel for the defendants also referred to two other passages in *Hartecon JV Sdn Bhd & Anor* at p 65 which reads '... In our judgment the decision of the learned judge overruling the respondent's preliminary objection rendered the point taken *res judicata*.' and at p 66 which reads 'A decision given by a court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. (See *Pearreth v Marriott* (1883) 22 Ch D 182, *Hook v Administrator-General of Bengal & Ors* LR 48 IA 187 and *Re Trusts of the Will of Tan Tye (Deceased)*, *Yap Liang Neo v Tan Yew Ghee & Anor* [1936] MLJ 141 at pp 147-151). Parties cannot raise a second time in the same suit an issue that has already been determined either expressly or by necessary implication. (See *Louis Dreyfus v Aruna Chalayya* LR 58 IA 381).'

D Learned counsel for the defendants therefore contended that the decision of the learned magistrate on the preliminary objection is appealable and expressed the defendants' fear that the learned magistrate may not allow the defendants to once again raise that defence of limitation during the trial.

E *Submissions on appeal by plaintiffs' counsel*

On the other hand, the plaintiffs' counsel submitted as follows:

- (1) The word decision in O 49 r 6(1) of the Subordinate Courts Rules 1980 does not refer to any ruling made in the course of the trial and referred to s 3 of the Courts of Judicature Act 1964 to be read with s 27 and s 29 of the same Act. Section 3 under the heading interpretation defines the word 'decision' as follows:

'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;

G Section 27 reads as follows:

The appellate civil jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts as hereinafter provided.

Section 29 reads as follows:

H All civil appeals from a subordinate court shall be by way of re-hearing, and the High Court shall have the like powers and jurisdiction on the hearing of appeals as the Court of Appeal has on the hearing of appeals from the High Court.

- (2) He referred to s 4 of the Courts of Judicature Act 1964 which reads as follows:

I In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

(3) The ruling by the learned magistrate on the preliminary objection does not finally dispose of the hearing of the civil action and the rights of the parties as the civil action has been scheduled for hearing. **A**

(4) The decision made by the learned magistrate was only an interlocutory order and not a final order and he relied on a passage in *Ratnam v Cumarasamy & Anor* [1962] MLJ 330 at p 332 which was laid down by Lord Alverstone CJ, the test for determining whether an order is final or interlocutory, wherein his Lordship said: **B**

I agree. It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order. **C**

(5) He also referred to the decision of the Court of Appeal in *Saad bin Abas & Anor v PP* [1999] 4 MLJ 129 wherein his Lordship Lamin PCA said, inter alia, at p 138 that:

Whether it is a judgment, decision or order pronounced by a court, there must be an element of finality before there can be an appeal. **D**

(6) Learned counsel for the plaintiffs further relied on the decision of the Court of Appeal in *Dato' Seri Anwar Ibrahim v PP* [1999] 1 MLJ 321. In that case, the appellant had applied for a bail in the High Court but bail was refused. The appellant then appealed to the Court of Appeal. The Court of Appeal refused bail. His Lordship NH Chan JCA, inter alia, said in referring to the new definition of the word 'decision' as in the amended s 3 of the Courts of Judicature Act 1964 which came into effect on 31 July 1998, that the order of the High Court in refusing to allow bail to the defendant is not appealable to the Court of Appeal as the decision (ruling) did not have the effect of finally determining the rights of the accused and said that only the outcome of the trial that would have the effect of finality disposing of his rights. His Lordship said at pp 329–330: **E**

This new definition of 'decision', as in the amendment, does not include a judgment or order which does not deal with the final rights of the parties on the matters in dispute. In other words, what has been excluded from the meaning of the word 'decision' is the type of judgments and orders which is termed 'interlocutory' by 26 *Halsbury's Laws of England* (4th Ed) para 506, at p 240, which reads: **G**

'Interlocutory judgments and orders. An order which does not deal with the final rights of the parties, but either: (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure; or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'. **H**

An interlocutory order, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.' **I**

Shortly stated, what the amendment means is that a judgment or order which does not deal with the final rights of the parties, but is made *pendente lite*, and

- A** gives no final decision on the matters in dispute, is not a 'decision' within the meaning of that word in the current version of s 3 of the [Courts of Judicature] Act, and therefore is not appealable. It makes no difference that such a judgment or order is final, that is to say conclusive, as to the subordinate matter with which it deals. For instance, an order granting or refusing bail is final (conclusive) as to the application with which it deals but it is still an order which does not deal with the final rights of the parties. Such an order is made before judgment or sentence and gives no final decision on the matters in dispute. A judgment or order, even though not conclusive (final) of the main dispute, may be conclusive (final) as to the subordinate matter with which it deals. In this way, an interlocutory judgment or order may be conclusive (final) as to the subordinate matter with which it deals even though it is not conclusive (final) of the main dispute.
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- C** The real distinction is between (for want of a better word) what is called final judgments and orders and interlocutory judgments and orders. In general, a judgment or order which determines the principal matter in question is termed 'final': see 26 *Halsbury's Laws of England*, para 505 at p 238. Actually, the use of the term 'final' is tautological as all judgments and orders are final. The term (final) is used for the purpose of distinguishing between judgments and orders and 'interlocutory' judgments and orders. The difference is that judgments and orders which are not termed 'interlocutory' judgments and orders are appealable under the new meaning of the word 'decision' as defined in s 3 by the 1998 amendment. In other words, judgments and orders which determine the principal matter in question are termed 'final' judgments and orders, and they are appealable. But, those judgments and orders which give no final decision on the matters in dispute (which are termed 'interlocutory' judgments and orders) are now no longer appealable.'
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Final judgment and order — As for the definition of final judgment or order, *Halsbury's Laws of England*, para 505, at p 238–239 reads:

- F** In general a judgment or order which determines the principal matter in question is termed 'final'. A final judgment has been defined as 'a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established' and as 'a judgment obtained in an action by which the question whether there was a pre-existing right of the plaintiff against the defendant is finally determined in favour either of the plaintiff or of the defendant'. A final order is none the less final by reason that it is subject to appeal, and a judgment may be final even though it directs inquiries, or deals with costs only, or is made on an interlocutory application, or reserves liberty to apply.
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H *Decision of High Court*

- It is the view of this court that in order to determine whether an order or decision is final, that order or decision must have determined the principal matter before the court thereby having concluded the main dispute and consequently, does not require further hearing or decision of the case to be made by the court on the whole of the proceedings. In other words, the order or decision should not have dealt with the final rights of the parties on the subject matter in dispute which means, it is not conclusive of the main
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suit. In such a situation, the order or decision is not appealable within the meaning of the word 'decision' as defined in s 3 of the Courts of Judicature Act 1964.

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On the other hand, if the order or decision finally disposes of the principal matter or the subject matter in dispute thereby bringing a conclusion to the whole of the proceedings without further date of hearing, it is the view of this court that the order or decision in those circumstances is appealable.

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This court is also of the view that although both the cases namely, *Saad Abas & Anor* and *Dato' Seri Anwar Ibrahim* refer to criminal trials and appeals, the principle enunciated and applied there are directly relevant and applicable to the present appeal before this court as the word 'decision' as defined in s 3 of the Courts of Judicature Act 1964 refers to both criminal and civil cases.

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In the appeal before this court, the decision or ruling made by the learned magistrate on the preliminary objection was not a final decision as it has only disposed of the preliminary objection thereby leaving scope for the parties to proceed with the hearing on the principal or main subject matter which will determine the rights of the parties in the civil action.

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As the defendants have raised the issue of limitation in the statement of defence, the defendants have the right to rely on that plea of limitation when the case proceeds for hearing notwithstanding the decision of the learned magistrate on the preliminary objection which is only an interlocutory order and not a final order. Consequently, it is the view of this court that the doctrine of *res judicata* does not apply against the defendants as the learned magistrate has not heard the evidence on the merits and the defendants are entitled to raise once again the plea of limitation as part of the defendants' case during the trial.

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Even if the learned magistrate has made a ruling on the issue of limitation based on the preliminary objection as to when the time starts on the breach for the purpose of determining the period of the limitation, whether on 13 November 1990 or 16 October 1995 which the learned magistrate cannot rightly do so, and which cannot stand in law because the magistrate has not heard the evidence of the parties to the dispute on the merits of the case, this court is of the view that the defendants have still not lost their right to raise once again that plea of limitation during the trial as pleaded in the statement of defence. If the learned magistrate has made a ruling as to the date when the breach had occurred, with respect, he would have erred in law as the date for the purpose of limitation could only be determined upon hearing the evidence and the documents which has to be tendered and produced through proper legal process and put in formally, not otherwise such as by having a sight of the letter dated 16 October 1995 as it was not properly before the court to be received as an admissible document and neither was there any evidence that the letter was an agreed document *Watson v Rodwell* (1879) 11 Ch D 150 (CA).

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This court is of the view that if a party is allowed to appeal against a ruling or decision made on a preliminary objection before the start of a trial

- A** or during the trial which decision does not determine or finally dispose of the rights of the parties as spelt out in s 3 of the Court of Judicature Act 1964, the High Courts will be flooded with appeals and have to deal with those appeals as speedily as possible in order not to prolong the trial in the lower courts which will be pending the outcome of the decision of the appeal. As if this situation is allowed to happen, the hearing of the cases in
- B** the lower courts will come to a standstill whereby it will result in the backlog of cases in the lower courts. It is fortunate that the new interpretation of the word 'decision' in s 3 of the Courts of Judicature Act 1964 had made it expressly clear and, by implication, this court is of the view the word 'decision' in O 49 r 6 of the Subordinate Courts Rules 1980 does not apply
- C** to the decision made by the learned magistrate on the preliminary objection and on the facts of this case.

However, it is not inappropriate to state that if the decision of the learned magistrate had allowed the preliminary objection and which by implication would have disposed of the plaintiffs' claim, the plaintiffs no doubt will have the right of appeal against the decision as that decision or

D ruling would have finally disposed of the plaintiffs' right to the claim thereby denying the plaintiffs from proceeding with the full hearing of their claim.

- The crucial question on the plaintiffs' claim is: when did the plaintiffs' right to sue accrue for the agreed liquidated damages for the delay by the defendants in delivering vacant possession of the house, whether on the date of the breach pursuant to the said agreement or pursuant to the date stated
- E** in the said letter dated 16 October 1995? As this is a question of construction of both the documents, this court is of the view that that issue could only be determined as stated above on hearing formal evidence during the trial where both parties have the right to examine and cross-examine each other and their witnesses and not by having a sight of the document
- F** which has not been formally put in as an admissible evidence.

In the circumstances, the defendants' appeal is dismissed with costs. This court is of the view that the appeal was unnecessary which as a result had caused the hearing of the main suit in the magistrate's court to be delayed indefinitely pending the outcome of this appeal.

- G** *Order accordingly.*

Reported by Benjamin Yong

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